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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,721	04/09/2004	Robert Edwin Schneider	45568-00457	1511
25231	7590	06/08/2006	EXAMINER	
MARSH, FISCHMANN & BREYFOGLE LLP 3151 SOUTH VAUGHN WAY SUITE 411 AURORA, CO 80014			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3735	

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/821,721

Applicant(s)

SCHNEIDER ET AL.

Examiner

Samuel G. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-33 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-10, 12-20, 35 and 37 is/are rejected.
- 7) ☒ Claim(s) 6, 11, 21, 34 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-10, 12-20, 35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Metzler et al(5,702,342).

Claim 1 – element –24- is a retaining member, tongue –30- is a provides a guide which is movable along split –28-, the examiner is taking the position of element –24- against shoulder –26- as the locked position and any position other than that as the unlocked position, a spherical resilient member –54- and element –52- is the rotatable member. It is the examiners position that the member –52- is rotatable in two was, first it is rotatable about the axis of the shaft and it is rotatable about a point centered in the spherical resilient element –54-. The angular movement is only limited by the post –48- and the opening in retention member –24-.

Claim 2 – tongues -30- and –42- are diametrically opposed around retention member –54-.

Claim 3 – when assembled retaining member –41- and resilient member –54- are interconnected as a single unit.

Claim 4 – the apparatus is receivable in a cavity in the mounting apparatus –12-.

Claim 5 – element –52- is a rotatable member (rotatable around the axis of the longitudinal axis of element –52- and also angularly rotatable with respect to a point inside the mounting apparatus). When locking ring –41- (rotatable member) is in the locked position, threaded into the mounting apparatus the frictional retention member will provide a limited amount of retention force/friction. It is the examiner's position that there would inherently be a predetermined amount of force required to rotate post –52- when the apparatus is in a locked position.

Claim 7 – elements –64- provides a first interface.

Claim 8 – rotatable member –52- supports hearing aid transducer –62-.

Claim 9 – the examiner is taking the mounting post –52- as a portion of the housing of the transducer –62-.

Claim 10 – element –26- is a base distal element –24-.

Claim 12 – element –12- is a mounting apparatus, the examiner is taking elements –41- and –54- as retention apparatus. Element –41- moves along the threaded path to compress resilient member –54- to capture rotatable member –52-.

Claim 13 – element –41- is a retaining member, slots –64- provide a pair of guides and washer –40- provides a base distal the retaining member.

Claim 14 – it is the examiner's position that a tool such as a screwdriver would inherently be used to interface with retention member –41- and slots –64-

Claim 15 – the examiner is taking the un-numbered opening at the intersection of slots –64- as a first interface.

Claim 16 – the second interface is shown by lead line –40- in figure 1.

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Claim 17 - rotatable member –52- supports hearing aid transducer –62-.

Claim 18 - the examiner is taking the mounting post –52- as a portion of the housing of the transducer –62-.

Claim 19 – it is the examiner's position that the device is capable of being preassembled prior to implantation.

Claim 20 – the examiner is taking tongues –30- and –42- as detents engageable with channel –28-.

Claim 35 – the compressible member –54- is compressible in a direction traverse to said retaining member.

Claim 37 – the compressible member –54- is compressible in a direction traverse to said retaining member.

***Allowable Subject Matter***

Claims 6, 11, 21, 34 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 22-33 are allowed. Claim 22 must be amended to end with a period.

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The following is a statement of reasons for the indication of allowable subject matter:

Claims 22-33 – the prior art does not teach or fairly suggest a method as claimed for implanting a hearing aid transducer including using a spring loaded retention apparatus to capture a rotatable member in a desired angular orientation.

### ***Response to Arguments***

Applicant's arguments filed 4/7/2006 have been fully considered but they are not persuasive. The applicant argues that the compressible member –54- does not lock rotatable member –41-. In response the examiner would like to point out that in the original claim two rotatable members were set forth and the examiner considered element –41- a rotatable member and element –52- a rotatable member. After the amendment to claim 1 only one rotatable member is set forth. The examiner is considering element –52- as that rotatable member which is captured in the desired angular orientation by compression of the compressible member –54-.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Samuel G. Gilbert', is positioned above the printed name.

Samuel G. Gilbert  
Primary Examiner  
Art Unit 3735

sgg